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28
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SANTA ROSA DIVISION

29 In Re:
30
31 KENNETH W. MATTSON
32
33 Respondent Debtor.

Case No. 24-10714-CN

Chapter 11

**KENNETH W. MATTSON'S ANSWER
TO INVOLUNTARY PETITION**

Respondent Debtor Kenneth W. Mattson ("Mattson"), by and through its attorneys of record, answers the Involuntary Petition Against a Non-Individual ("Petition") filed by Petitioner Creditor LeFever Mattson, a California Corporation ("LeFever Mattson" or "Petitioner") on November 22, 2024, and prays that an order for relief be entered against Mattson under Chapter 11 of title 11, United States Code, and controverting the same:

- 1) Admits the allegations contained in paragraphs 2, 4-5, 7-10 of the Petition.
- 2) Denies each and every allegation contained in paragraphs 11 and 13 of the Petition.
- 3) Has insufficient information to admit or deny the allegations contained in paragraphs 1, 3, 6, and 12 of the Petition.
- 4) With respect to Attachment A to the Petition, Admits the allegations contained in the first paragraph, denies the allegations contained in the second, third, fourth, and fifth paragraphs in Attachment A.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE **(Failure to State a Claim)**

1. As a separate and first affirmative defense to the Petition, and to the relief requested, Mattson asserts that the Petitioners have maliciously brought this Petition.
2. LeFever Mattson knew has actual knowledge of the dispute regarding the enforceability of the Indemnity Agreement.
3. The propriety and enforceability of the Indemnity Agreement is the subject of pending civil litigation in two separate pending proceedings.
4. The first civil proceeding pending before the Sacramento County Superior Court of California, *Mattson v. LeFever Mattson, et al.*, Case No. 24CV011305, was initiated on June 6, 2004, and specifically includes allegations relating to the enforceability of the Indemnity Agreement.
5. The second proceeding, *LeFever Mattson, et al. v. Mattson, et al.*, pending before the Sonoma County Superior Court of California, Case No. 24CV03485, was filed on June 6, 2024,

1 and specifically includes allegations under the Indemnity Agreement.

2 6. Accordingly, LeFever Mattson has improperly and wrongfully pursued this
3 involuntary bankruptcy proceeding, in bad faith and without just cause.

4 7. Mattson is entitled to seek recovery of all fees and costs incurred in defending
5 against this improper Petition.

6 **SECOND AFFIRMATIVE DEFENSE**
7 **(Accord and Satisfaction)**

8 8. As a separate and second affirmative defense to the Petition, and to the relief
9 requested, obligations of Mattson has been met through the uncontested payments of monies to
10 Petitioner.

11 9. LeFever Mattson received consideration to support an accord and satisfaction
12 through the then uncontested partial payment in full satisfaction of a disputed claim. LeFever
13 Mattson accepted the partial payment with the knowledge that the debtor offered it upon the
14 condition that the acceptance of the payment was in full satisfaction of the disputed claim or not at
15 all.

16 10. Mattson is entitled to seek recovery of all fees and costs incurred in defending
17 against this improper Petition.

18 **THIRD AFFIRMATIVE DEFENSE**
19 **(Anticipatory Breach)**

20 11. As a separate and third affirmative defense to the Petition, and to the relief requested,
21 Mattson anticipated the breach of the obligations held by LeFever Mattson, and therefore Mattson
22 is not obligated to LeFever Mattson under the terms of the Indemnity Agreement.

23 12. Here, LeFever Mattson expressly repudiated its obligation to perform.

24 13. LeFever Mattson therefore failed to fulfill the terms of its de minimus obligations
25 under the terms of the Indemnity Agreement.

26 14. Mattson is entitled to seek recovery of all fees and costs incurred in defending
27 against this improper Petition.

FOURTH AFFIRMATIVE DEFENSE
(Assumption of Risk)

15. As a separate and fourth affirmative defense to the Petition, and to the relief requested, Mattson asserts Petitioner has assumed the risks of the claims in which it seeks relief.

16. LeFever Mattson had knowledge of the risk involved in both enforcement of the Indemnity Agreement.

17. Mattson owed no duty to protect Petitioner from any alleged injury resulting from the risk incurred in its agreements and actions.

18. Mattson is entitled to seek recovery of all fees and costs incurred in defending against this improper Petition.

FIFTH AFFIRMATIVE DEFENSE
(Breach of Implied Covenant of Good Faith and Fair Dealing)

19. As a separate and fifth affirmative defense to the Petition, and to the relief requested, Mattson asserts Petitioner has breached the implied covenants of good faith and fair dealing.

20. In every contract is the implied covenant of good faith and fair dealing, which includes that a party will exercise that right in good faith and in accordance with fair dealing and not act in a manner that destroys or otherwise injures the right of another to receive the benefits of the contract.

21. LeFever Mattson has breached the implied covenant of good faith and fair dealing by acting in a manner that would destroy any benefit Mattson might have received under the Indemnity Agreement and acting in a manner to intentionally maximize any potential liability Mattson may have under the Indemnity Agreement, by, among other things, publicly making false accusations that LeFever Mattson knew would cause litigation.

22. Mattson is entitled to seek recovery of all fees and costs incurred in defending against this improper Petition.

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SIXTH AFFIRMATIVE DEFENSE
(Prior Material Breach of Contract)

23. As a separate and sixth affirmative defense to the Petition, and to the relief requested, Mattson asserts LeFever Mattson has breached the Indemnity Agreement.

24. LeFever Mattson's conduct by failing to timely respond to the demand that it comply with its obligation to cooperate with demands for records constitutes a material failure to perform its obligations.

25. LeFever Mattson's actions have resulted in significant injury to Mattson as the denial of timely and reasonable access to records of LeFever Mattson have prolonged Mattson's inability to investigate and respond to allegations of wrongdoing, among numerous other injuries.

26. Mattson is entitled to seek recovery of all fees and costs incurred in defending against this improper Petition.

SEVENTH AFFIRMATIVE DEFENSE
(Conflict of Interest)

27. As a separate and seventh affirmative defense to the Petition, and to the relief requested, Mattson asserts that the drafting, presentation and execution of the Indemnity Agreement, was done under an impermissible conflict of interest.

28. LeFever Mattson was represented by the law firm Hanson Bridgett, and its attorneys, including Scott Smith, all of whom provided legal services to LeFever Mattson.

29. Mattson was represented by the law firm Hanson Bridgett, including its attorney Scott Smith, all of whom provided legal services to Mattson during the period of time relevant to the subjects of the Indemnity Agreement.

30. LeFever Mattson, through Tim LeFever, directed Scott Smith, then employed by Hanson Bridgett, to draft the terms of the Indemnity Agreement.

31. Scott Smith, while employed by Hanson Bridgett, drafted the Indemnity Agreement, transmitted the Indemnity Agreement to Mr. Mattson, and falsely represented to Mr. Mattson that the nature and extent of the Indemnity Agreement was based on prior and specific communications

1 between Mr. Mattson and LeFever Mattson, and was based upon the understanding and belief that
2 Mr. Smith was acting as counsel for LeFever Mattson and Mattson .

3 32. No disclosure or waiver of any conflict of interest was properly disclosed or
4 obtained from Mr. Mattson or Mattson by LeFever Mattson, Hanson Bridgett, or Scott Smith.

5 33. The Indemnity Agreement, which includes personal protections for Scott Smith and
6 Hanson Bridget, is improper as it is premised on failures of adequate disclosure and conflicts of
7 interest which render the entire agreement unenforceable.

8 34. Mattson is entitled to seek recovery of all fees and costs incurred in defending
9 against this improper Petition.

10 **EIGHTH AFFIRMATIVE DEFENSE**
11 **(Constructive Fraud)**

12 35. As a separate and eighth affirmative defense to the Petition, and to the relief
13 requested, the claims asserted by Petitioners breached their obligations in a manner that results in
14 constructive fraud.

15 36. LeFever Mattson had duties of good faith and fair dealing and fiduciary duties to
16 Mattson under the terms of the Indemnity Agreement.

17 37. LeFever Mattson acted with fraudulent intent to give itself, Tim LeFever, Scott
18 Smith, and Hanson Bridget improper advantages, which were obtained through misleading and
19 prejudicial actions and to the disadvantage of Mattson .

20 38. Such actions have resulted in injury to Mattson .

21 39. Mattson is entitled to seek recovery of all fees and costs incurred in defending
22 against this improper Petition.

23 **NINTH AFFIRMATIVE DEFENSE**
24 **(Contrary to Public Policy, Cal. Civ. Code § 1668)**

25 40. As a separate and ninth affirmative defense to the Petition, and to the relief
26 requested, Mattson asserts the Indemnity Agreement is unenforceable.

27 41. The Indemnity Agreement is facially and substantively contrary to public policy
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1 pursuant to Cal. Civ. Code § 1668.

2 42. Under California law, any contract that seeks to directly or indirectly exempt one
3 from conduct arising from their own fraud or willful injury to a person, is a violation of law and is
4 against public policy and unenforceable.

5 43. The Indemnity Agreement, which directly exempts LeFever Mattson, Tim LeFever,
6 Scott Smith and indirectly exempts Hanson Bridgett and other third parties from liability arising
7 from their own willful conduct which has caused injury and harm to third persons is unenforceable.

8 44. Therefore, the Petition by LeFever Mattson seeking to enforce the unlawful terms
9 of the Indemnity Agreement is improper and invalid.

10 45. Mattson is entitled to seek recovery of all fees and costs incurred in defending
11 against this improper Petition.

12 **TENTH AFFIRMATIVE DEFENSE**
13 **(Deceit)**

14 46. As a separate and tenth affirmative defense to the Petition, and to the relief
15 requested, Mattson asserts Petitioner claims are founded in deceit.

16 47. LeFever Mattson has a duty to disclose all known facts and exercise reasonable care
17 in disclosing such facts.

18 48. LeFever Mattson failed to disclose all known facts and such has resulted in
19 misrepresentation and bad faith conduct in bringing this Petition.

20 49. Mattson is entitled to seek recovery of all fees and costs incurred in defending
21 against this improper Petition.

22 **ELEVENTH AFFIRMATIVE DEFENSE**
23 **(Duress)**

24 50. As a separate and eleventh affirmative defense to the Petition, and to the relief
25 requested, the Indemnity Agreement that is the basis for the Petition, was the product of duress.

26 51. Here, the execution of the Indemnity Agreement was the product of duress, which
27 included undue influence and precluded the true voluntary consent to the terms of the Indemnity
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1 Agreement.

2 52. Due to the wrongful demands, pressure and force placed by LeFever Mattson, the
3 Indemnity Agreement, drafted by counsel for LeFever Mattson and Mattson, and understood by
4 Tim LeFever a licensed California Attorney, was executed without independent advice.

5 53. Therefore, the Indemnity Agreement is unenforceable and the Petition improperly
6 brought by LeFever Mattson.

7 54. Mattson is entitled to seek recovery of all fees and costs incurred in defending
8 against this improper Petition.

9 **TWELFTH AFFIRMATIVE DEFENSE**
10 **(Equitable Estoppel)**

11 55. As a separate and twelfth affirmative defense to the Petition, and to the relief
12 requested, Petitioner's claims is barred by estoppel.

13 56. LeFever Mattson is aware of its wrongful conduct in the execution of the Indemnity
14 Agreement.

15 57. LeFever Mattson is aware of the fact that its then general counsel, Scott Smith and
16 Hanson Bridgett, was engaged in not only representing LeFever Mattson but Mattson at all times
17 relevant and had a conflict of interest in the drafting, execution and benefits secured through the
18 Indemnity Agreement.

19 58. LeFever Mattson is aware of the inadequate consideration made in exchange for the
20 Indemnity Agreement.

21 59. Therefore, LeFever Mattson is estopped from seeking to enforce the terms of the
22 Indemnity Agreement.

23 60. Mattson is entitled to seek recovery of all fees and costs incurred in defending
24 against this improper Petition.

25 **THIRTEENTH AFFIRMATIVE DEFENSE**
26 **(Failure of Consideration)**

27 61. As a separate and thirteenth affirmative defense to the Petition, and to the relief
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1 requested, LeFever Mattson's claim is barred for failure of consideration.

2 62. LeFever Mattson is not entitled to recover any sums from Mattson, because there
3 has been a failure of consideration on the part of Petitioners, and each of them.

4 63. LeFever Mattson failed to perform under the illusory consideration purported to
5 support the Indemnity Agreement.

6 64. Any such consideration to support the Indemnity Agreement was without value and
7 fails to support a basis of consideration.

8 65. Mattson is entitled to seek recovery of all fees and costs incurred in defending
9 against this improper Petition.

10 **FOURTEENTH AFFIRMATIVE DEFENSE**
11 **(False Statements)**

12 66. As a separate and fourteenth affirmative defense to the Petition, and to the relief
13 requested, as to the false statements asserted by Petitioner.

14 67. LeFever Mattson has made, delivered, and published statements that must
15 necessarily be matters of opinion only and which are false and deceitful regarding the claims in
16 which Petitioners seek relief by means of the Petition.

17 68. LeFever Mattson knows that its statements published regarding the terms and
18 conditions and acts of Mattson in relation to the Indemnity Agreement are without merit and false
19 and continue to pursue such statements and relief under the terms of the Indemnity Agreement.

20 69. Windtree, through LeFever Mattson, falsely claims a basis in which it seeks to
21 recover rents. These claims are known to be without merit and have been known to be false and
22 without merit since before the initiation of the Petition.

23 70. Mattson is entitled to seek recovery of all fees and costs incurred in defending
24 against this improper Petition.

25 **FIFTEENTH AFFIRMATIVE DEFENSE**
26 **(Failure to Mitigate Damages)**

27 71. As a separate and fifteenth affirmative defense to the Petition, and to the relief
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1 requested, Mattson asserts Petitioner has failed to mitigate its damages.

2 72. LeFever Mattson could have avoided any claims and alleged damages by
3 undertaking reasonable efforts to investigate the nature and basis for their asserted claims set forth
4 in the Petition and by taking reasonable steps to avoid harm, including refraining from taking
5 actions which unreasonably and unnecessarily incited hysteria and alarm among investors and
6 creditors of LeFever Mattson and of Mattson and each of them, and further in their pursuing
7 bankruptcy relief for entities which were neither insolvent nor were there reasonable disputes as to
8 the propriety of investor interests.

9 73. LeFever Mattson has failed to take such steps to mitigate and have consequently
10 failed to mitigate their damages.

11 74. Mattson is not liable to Petitioners for any damages concerning which Petitioners
12 failed to mitigate..

13 75. Mattson is entitled to seek recovery of all fees and costs incurred in defending
14 against this improper Petition.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**
16 **(False Pretenses)**

17 76. As a separate and sixteenth affirmative defense to the Petition, and to the relief
18 requested, Petitioner's claim pursuant to the Indemnity Agreement is based upon false pretenses.

19 77. To the extent LeFever Mattson asserts that the consideration given in exchange for
20 the execution of the Indemnity Agreement was for the purpose of essentially forestalling
21 embarrassing and damaging litigation, such was not the intent or motivation of LeFever Mattson
22 as demonstrated by their subsequent actions.

23 78. Based upon such purported incentives to induce the execution of the Indemnity
24 Agreement, those inducements were clearly under false pretenses, as just weeks later LeFever
25 Mattson published hyperbolic inflammatory and untruthful statements about Mattson and KS
26 Mattson Partners, LP for the purpose of inciting costly, embarrassing and damaging litigation.

27 79. Further, LeFever Mattson, through its representatives and agents, knowingly
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1 deceived Mattson through these false pretenses into executing the Indemnity Agreement by
2 intentionally misrepresenting material facts relating to the scope and purpose of the Indemnity
3 Agreement.

4 80. Because any execution of the Indemnity Agreement was under false pretenses, it is
5 voidable, and Mattson accordingly have declared the Indemnity Agreement to be void.

6 81. Mattson is entitled to seek recovery of all fees and costs incurred in defending
7 against this improper Petition.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**
9 **(Fault of Others)**

10 82. As a separate and seventeenth affirmative defense to the Petition, and to the relief
11 requested, Petitioner alleged damages are the fault of others.

12 83. Any damages allegedly sustained by LeFever Mattson was fully or in part the fault
13 of Petitioner, or others, whether that fault be the proximate result of breach of contract, negligence,
14 fraud or any other type of fault caused by persons, firms, corporations or entities other than Mattson.

15 84. Mattson is entitled to seek recovery of all fees and costs incurred in defending
16 against this improper Petition.

17 **EIGHTEENTH AFFIRMATIVE DEFENSE**
18 **(Fraud)**

19 85. As a separate and eighteenth affirmative defense to the Petition, and to the relief
20 requested, Petitioner has committed fraudulent acts against Mattson .

21 86. LeFever Mattson through false representations of material facts made through Scott
22 Smith and Tim LeFever, which were known to be made with the intent to deceive and for the
23 purpose of inducing reliance by Mattson obtained the execution of the Indemnity Agreement.

24 87. The representations made by Scott Smith, on behalf of LeFever Mattson, regarding
25 the scope and extent of the indemnity agreement were knowingly false and made for the specific
26 purpose of obtaining Mattson's execution of the agreement. As a result of the fraudulent actions of
27 LeFever Mattson, Mattson has been harmed in having to defend this Petition and defend against
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1 the Indemnity Agreement.

2 88. Mattson is entitled to seek recovery of all fees and costs incurred in defending
3 against this improper Petition.

4 **NINETEENTH AFFIRMATIVE DEFENSE**
5 **(Frustration of Purpose)**

6 89. As a separate and nineteenth affirmative defense to the Petition, and to the relief
7 requested, LeFever Mattson cannot seek to enforce the Indemnity Agreement as performance is
8 excused by the unforeseeable failure of consideration.

9 90. LeFever Mattson has frustrated the purpose of the Indemnity Agreement through its
10 improper actions, which were not foreseeable to Mattson.

11 91. Any consideration has been destroyed by LeFever Mattson's actions, which were
12 unforeseeable at the time of the execution of the Indemnity Agreement, which excuses any
13 performance by Mattson.

14 92. Mattson is entitled to seek recovery of all fees and costs incurred in defending
15 against this improper Petition.

16 **TWENTIETH AFFIRMATIVE DEFENSE**
17 **(In Pari Delicto)**

18 93. As a separate and twentieth affirmative defense to the Petition, and to the relief
19 requested, Petitioners are equally responsible for the alleged harmful conduct, and such claims are
20 barred by the doctrine of *in pari delicto*.

21 94. LeFever Mattson was at all times fully engaged and aware of each of the
22 investments, acquisitions, property sales, 1031 exchanges, and other business transactions of
23 LeFever Mattson and its investment entities.

24 95. Each investment interest was properly and adequately documented by agents of
25 LeFever Mattson and maintained in the ordinary course of business by controlling officers and
26 agents of LeFever Mattson.

27 96. LeFever Mattson obtained the monetary proceeds of each transaction through its
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1 bank accounts in which all officers and directors of LeFever Mattson had access as well as signatory
2 authority to make draws from the accounts.

3 97. Despite these facts, LeFever Mattson incited activities which have placed all assets
4 and interests of LeFever Mattson and each of its related and affiliated investment entities' interests
5 in jeopardy as a result of its own reckless conduct.

6 98. Mattson is entitled to seek recovery of all fees and costs incurred in defending
7 against this improper Petition.

8 **TWENTY-FIRST AFFIRMATIVE DEFENSE**
9 **(Judicial Estoppel)**

10 99. As a separate and twenty-first affirmative defense to the Petition, and to the relief
11 requested, Petitioner's claims is barred by judicial estoppel.

12 100. LeFever Mattson has presented sworn, prior inconsistent statements made in
13 judicial proceedings before this and other courts, and as such Petitioners are now estopped from
14 maintaining statements and positions inconsistent with prior statements, which were not made
15 inadvertently or because of mistake, fraud, or duress.

16 101. Mattson is entitled to seek recovery of all fees and costs incurred in
17 defending against this improper Petition.

18 **TWENTY-SECOND AFFIRMATIVE DEFENSE**
19 **(Laches)**

20 102. As a separate and twenty-second affirmative defense to the Petition, and to
21 the relief requested, Petitioner unreasonably delayed in bringing its claims for relief sought by this
22 Petition.

23 103. LeFever Mattson's delay is unreasonable and without excuse and such delay
24 has resulted in prejudice and injury to Mattson.

25 104. Mattson is entitled to seek recovery of all fees and costs incurred in
26 defending against this improper Petition.

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1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 **(Lack of Consideration)**

3 105. As a separate and twenty-third affirmative defense to the Petition, and to the
4 relief requested, LeFever Mattson's claim fails for lack of consideration.

5 106. LeFever Mattson is not entitled to recover any sums from Mattson because
6 there was no consideration given for any alleged agreement with LeFever Mattson which it seeks
7 to enforce against Mattson under the Indemnity Agreement.

8 107. Mattson is entitled to seek recovery of all fees and costs incurred in
9 defending against this improper Petition.

10 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

11 **(Misrepresentation)**

12 108. As a separate and twenty-fourth affirmative defense to the Petition, and to
13 the relief requested, Mattson asserts misrepresentation by Petitioner.

14 109. LeFever Mattson supplied Mattson with information relating to its claims
15 and interests, and the nature and scope of the Indemnity Agreement.

16 110. The information supplied by LeFever Mattson about its claims and interests
17 as well as the scope and nature of the Indemnity Agreement is false and to the extent such
18 information was justifiably relied on by Mattson, it has resulted in damages to Mattson.

19 111. Mattson is entitled to seek recovery of all fees and costs incurred in
20 defending against this improper Petition.

21 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

22 **(Petitioners Lack Standing, 11 U.S.C. § 303(b)(1))**

23 112. As a separate and twenty-fifth affirmative defense to the Petition, and to the
24 relief requested, each of the claims asserted by Petitioner lacks standing because each claim for
25 relief is the subject of a bona fide dispute as to both liability and amount.

26 113. Mattson disputes that it is liable to LeFever Mattson under the express terms
27 of the Indemnity Agreement, as the Indemnity Agreement is void, voidable, or otherwise
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unenforceable, as a matter of law.

114. Mattson asserts that the amount of the claim by LeFever Mattson is subject to a bona fide dispute as the fees requested are disputed as to whether such fees were incurred in conformity with the express terms and limitations set forth in the Indemnity Agreement and further disputes that the amount of the fees requested pursuant to the Petition are reasonable.

115. Mattson is entitled to seek recovery of all fees and costs incurred in defending against this improper Petition.

TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Promissory Estoppel)

116. As a separate and twenty-sixth affirmative defense to the Petition, and to the relief requested, Mattson asserts Petitioner's claim is barred by the doctrine of promissory estoppel.

117. Mattson reasonably and foreseeably relied upon the promises of LeFever Mattson to induce actions by Mattson to his detriment.

118. In reliance of LeFever Mattson's promises, Mattson has sustained damages.

119. Mattson is entitled to seek recovery of all fees and costs incurred in defending against this improper Petition.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

120. As a separate and twenty-seventh affirmative defense to the Petition, and to the relief requested, Mattson is not liable to LeFever Mattson under the doctrine of unclean hands.

121. LeFever Mattson and Mattson had a direct relationship.

122. LeFever Mattson has engaged in misconduct, either directly or through its principals, fiduciaries and agents, including, but not limited to, Tim LeFever, Scott Smith, Hanson Bridget, and others, in securing the execution of the Indemnity Agreement.

123. The actions of LeFever Mattson is in violation of conscience, good faith and equitable standards of conduct, and to enforce the terms of the Indemnity Agreement against Mattson would be inequitable as LeFever Mattson has not come to this Court with clean hands.

124. Mattson is entitled to seek recovery of all fees and costs incurred in defending against this improper Petition.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE
(Ratification)

125. As a separate and twenty-eighth affirmative defense to the Petition, and to the relief requested, Petitioners have ratified Mattson's conduct with respect to their respective claims asserted in the Petition.

126. LeFever Mattson has ratified Mattson's actions in relation to the Indemnity Agreement based upon its acts and conduct.

127. Le Fever Mattson's ratification of Mattson's actions serves as a ratification of those acts and thus invalidates Petitioners' claims.

128. Mattson is entitled to seek recovery of all fees and costs incurred in defending against this improper Petition.

TWENTY-NINTH AFFIRMATIVE DEFENSE
(Reasonable Business Conduct)

129. As a separate and twenty-ninth affirmative defense to the Petition, and to the relief requested, Mattson's actions were done in good faith, without malice, and pursuant to Mattson's reasonable conduct, and were thus privileged.

130. Mattson is entitled to seek recovery of all fees and costs incurred in defending against this improper Petition.

THIRTIETH AFFIRMATIVE DEFENSE
(Unconscionability)

131. As a separate and thirtieth affirmative defense to the Petition, and to the relief requested, enforcement of the Indemnity Agreement is unconscionable.

132. The Indemnity Agreement is an unconscionable contract, which is voidable under the law.

133. In the execution of the Indemnity Agreement, there was no meeting of the

1 minds as to the material terms; its provisions are contradictory to California law and policy; and it
2 is, consequently, unreasonable and unfair to enforce the terms of the Indemnity Agreement.

3 134. Mattson is entitled to seek recovery of all fees and costs incurred in
4 defending against this improper Petition.

5 **THIRTY-FIRST AFFIRMATIVE DEFENSE**
6 **(Undue Influence)**

7 135. As a separate and thirty-first affirmative defense to the Petition, and to the
8 relief requested, the execution of the Indemnity Agreement is the product of undue influence.

9 136. A fiduciary relationship existed between LeFever Mattson and its agents and
10 Mattson.

11 137. LeFever Mattson and other beneficiaries of the Indemnity Agreement,
12 including Scott Smith, were beneficiaries of the Indemnity Agreement.

13 138. LeFever Mattson, through its agents, including Scott Smith, influenced the
14 decision of Mattson to enter into the Indemnity Agreement due to coercion, pressure, and
15 misstatements of facts.

16 139. As a result, the Indemnity Agreement was not entered into with a true
17 voluntary consent to the agreement's terms, which was further exasperated by the reliance by
18 Mattson on the fiduciary relationship with and duties owed to them by Scott Smith and his law firm
19 Hanson Bridget, as well as inadequate disclosures being made to Mattson, including Mattson not
20 being advised to seek independent legal advice as to the terms of the Indemnity Agreement before
21 its execution.

22 140. As a result of those actions, the Indemnity Agreement void.

23 141. Mattson is entitled to seek recovery of all fees and costs incurred in
24 defending against this improper Petition.

25 **THIRTY-SECOND AFFIRMATIVE DEFENSE**
26 **(Unilateral Mistake)**

27 142. As a separate and thirty-second affirmative defense to the Petition, and to
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1 the relief requested, Petitioner's claims is based upon a unilateral mistake.

2 143. LeFever Mattson knew the Indemnity Agreement was far broader than
3 represented and used that knowledge and fact for the purpose of taking advantage of Mr. Mattson
4 and through him, Mattson.

5 144. Neither Mattson were excessively careless and the Indemnity Agreement
6 would not have been signed by Mattson if he had known about the mistake, and as such, the
7 Indemnity Agreement is subject to rescission.

8 145. Mattson is entitled to seek recovery of all fees and costs incurred in
9 defending against this improper Petition.

10 **THIRTY-THIRD AFFIRMATIVE DEFENSE**
11 **(Unjust Enrichment)**

12 146. As a separate and thirty-third affirmative defense to the Petition, and to the
13 relief requested, Petitioner has been unjustly enriched by means of Petitioner's conduct.

14 147. Mattson has conferred a benefit to LeFever Mattson under the Indemnity
15 Agreement.

16 148. LeFever Mattson has no right or entitlement to the benefit which Mattson
17 has conferred upon It under the Indemnity Agreement, and to allow LeFever Mattson to retain those
18 benefits while asserting claims for the same is inequitable to Mattson.

19 149. Mattson is entitled to seek recovery of all fees and costs incurred in
20 defending against this improper Petition.

21 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**
22 **(Waiver)**

23 150. As a separate and thirty-fourth affirmative defense to the Petition, and to the
24 relief requested, LeFever Mattson has affirmatively waived any right to the relief sought in the
25 Petition.

26 151. LeFever Mattson has voluntarily and intentionally relinquished any right to
27 the relief sought through their conduct. Its conduct, both expressly and implicitly, demonstrates
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1 that their claims are extinguished.

2 152. Mattson is entitled to seek recovery of all fees and costs incurred in
3 defending against this improper Petition.

4 THEREFORE, Mattson prays that the petition be dismissed and that it have judgment
5 against the alleged creditors as Petitioners, LeFever Mattson and Windtree, for costs, reasonable
6 attorneys' fees, damages caused by the improvident filing, and punitive damages, all as provided
7 in 11 U.S.C.A. § 303(i).

8 Dated: March 21, 2025

FENNEMORE WENDEL

10 By: /s/ Mark Bostick

11 Mark Bostick
12 Thiele R. Dunaway
13 James P. Hill
14 Christopher V. Hawkins
15 Attorneys for KENNETH W.
16 MATTSON
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1 **CERTIFICATE OF SERVICE**

2 I, Jeanne Rose, declare:

3 I am a citizen of the United States and am employed in the County of Alameda. I
4 am over the age of 18 years and not a party to the within-entitled action. My business address is
5 1111 Broadway, 24th Floor, Oakland, California, 94607-4036.
6

7 On the date set forth below I caused to be served the following document(s):

8 **KENNETH W. MATTSON'S ANSWER TO INVOLUNTARY PETITION**

9 on each party listed below in the following manner:

- 10
- 11 ☐ BY FIRST CLASS MAIL: by placing said document(s) in a sealed envelope with postage
12 fully prepaid, in a United States mail box at Oakland, California, addressed as set forth
13 below.
- 14 ☐ BY PERSONAL SERVICE: by causing to be delivered by reputable messenger service
15 said document(s) addressed as set forth below.
- 16 ☐ BY ELECTRONIC MAIL: by transmitting via email said document(s) to the email
17 address set forth below.
- 18 ☒ (ECF): Pursuant to controlling General Orders and LBR, the foregoing document(s) will
19 be served by the court via Notice of Electronic Filing ("NEF") and hyperlink to the
20 document(s). On the date set forth below, I checked the CM/ECF docket for this
21 bankruptcy case or adversary proceeding and determined that the following persons are on
22 the list of parties to receive NEF transmission at the email addresses stated below:

23 Elizabeth J. Cabraser on behalf of Interested Party Federal Plaintiffs
24 ecabraser@lchb.com, awolf@lchb.com

25 Theodore A. Cohen on behalf of Creditor Socotra Capital, Inc.
26 TCohen@sheppardmullin.com, mtzeng@sheppardmullin.com

27 Christopher Crowell on behalf of Creditor Citizens Business Bank
28 ccrowell@hrhlaw.com

Jared A. Day on behalf of U.S. Trustee Office of the U.S. Trustee / SR
jared.a.day@usdoj.gov

Micheline Noel Nadeau Fairbank on behalf of Debtor Kenneth W. Mattson
mfairbank@fennemorelaw.com

Michael C. Fallon on behalf of Attorney Michael C Fallon
mcfallon@fallonlaw.net, manders@fallonlaw.net

1 John D. Fiero on behalf of Other Prof. Official Committee of Unsecured Creditors
2 of LeFever Mattson
3 jfiero@pszjlaw.com, ocarpio@pszjlaw.com

4 Todd S. Garan on behalf of Creditor DEUTSCHE BANK TRUST COMPANY
5 AMERICAS, as Trustee for Residential Accredit Loans, Inc., Mortgage Asset-
6 Backed Pass-Through Certificates, Series 2007-QO3
7 ecfcanb@aldridgepate.com, TSG@ecf.inforuptcy.com

8 Debra I. Grassgreen on behalf of Other Prof. Official Committee of Unsecured
9 Creditors of LeFever Mattson
10 dgrassgreen@pszjlaw.com, hphan@pszjlaw.com

11 Deanna K. Hazelton on behalf of U.S. Trustee Office of the U.S. Trustee / SR
12 deanna.k.hazelton@usdoj.gov

13 Lance N. Jurich on behalf of Creditor LAFM Loan Owner, LLC
14 ljurich@loeb.com, pmatsuda@loeb.com

15 Robert B. Kaplan on behalf of Creditor Umpqua Bank
16 rbk@jmbm.com

17 Thomas Philip Kelly, III on behalf of Interested Party Thomas Philip Kelly, III
18 tomkelly@sonic.net

19 Jeannie Kim on behalf of Creditor Socotra Capital, Inc.
20 jekim@sheppardmullin.com, dgatmen@sheppardmullin.com

21 Dara Levinson Silveira on behalf of Petitioning Creditor LeFever Mattson, a
22 California corporation
23 dsilveira@kbbllp.com, hrobertsdonnelly@kbbllp.com

24 John McHugh on behalf of Debtor Kenneth W. Mattson
25 jmchugh@fennemorelaw.com

26 Thomas G. Mouzes on behalf of Creditor C.P. Grellas Partnership
27 tmouzes@boutinjones.com, cdomingo@boutinjones.com

28 Office of the U.S. Trustee / SR
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Jason Rosell on behalf of Other Prof. Official Committee of Unsecured Creditors
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Thomas B. Rupp on behalf of Petitioning Creditor LeFever Mattson, a California
corporation
trupp@kbbllp.com

Phillip John Shine on behalf of U.S. Trustee Office of the U.S. Trustee / SR
phillip.shine@usdoj.gov

Wayne A. Silver on behalf of Creditor Denise Ebbett
ws@waynesilverlaw.com, ws@waynesilverlaw.com

Brooke Elizabeth Wilson on behalf of Other Prof. Official Committee of
Unsecured Creditors of LeFever Mattson
bwilson@pszjlaw.com

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 21, 2025, at Oakland, California.

/s/ Jeanne Rose
JEANNE ROSE